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No. 91-993

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1991

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MICHAEL TOLOKAN, JR., Individually and Doing Business as JOE AND MIKE'S SERVICE STATION, and J & M, INC.,
*Petitioners,*

v.

MOBIL OIL CORPORATION,
*Respondent.*

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**On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit**

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## RESPONDENT'S BRIEF IN OPPOSITION

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ANDREW J. KILCARR *
EDWARD C. DUCKERS
WILLIAM L. MONTS III
HOGAN & HARTSON
555 Thirteenth Street, N.W.
Washington, D.C. 20004-1109
(202) 637-5621

DEBORAH V. SWIRLING
MOBIL OIL CORPORATION
3225 Gallows Road
Fairfax, VA 22037-0001
(703) 846-5856

* Counsel of Record

*Counsel for Respondent*

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

## QUESTION PRESENTED

In this Robinson-Patman Act case, petitioner relied only on evidence of an alleged "overcharge" to demonstrate antitrust injury and took no exception to the trial court's instructions to the jury on the law of antitrust injury. The jury returned a verdict for respondent, finding that petitioner suffered no antitrust injury and that respondent's prices were a lawful response to competition.

1. Under these circumstances, was the Second Circuit correct in holding that "[t]here is no basis for believing that the jury's finding of no antitrust injury was unduly influenced by submission of the meeting competition defense?"

## PARTIES BELOW

Respondent Mobil Oil Corporation agrees with the list of parties cited in the petition for certiorari. Pursuant to Rule 29.1, respondent's listing of subsidiaries and affiliates appears in the appendix to this brief in opposition.

TABLE OF CONTENTS


| | Page |
|---|---|
| QUESTION PRESENTED | i |
| PARTIES BELOW | ii |
| TABLE OF AUTHORITIES | iv |
| OPINIONS BELOW | 1 |
| JURISDICTION | 1 |
| STATUTES INVOLVED | 2 |
| STATEMENT OF THE CASE | 2 |
| REASONS FOR DENYING THE WRIT | 12 |
| I. THE JURY'S VERDICT IN THIS CASE DOES NOT WARRANT THIS COURT'S REVIEW | 12 |
| A. This Case Presents No Substantive Legal Question On Antitrust Injury | 12 |
| B. No Evidence Supports Tolokan's Undue Influence Claim | 14 |
| C. Tolokan Failed to Prove Antitrust Injury as a Matter of Law | 16 |
| II. PETITIONER'S QUESTIONS ON THE MEETING COMPETITION DEFENSE ARE NOT WORTHY OF REVIEW | 20 |
| A. Tolokan's Failure to Present an Antitrust Injury Question Warranting Review Makes Consideration of the Other Questions in the Petition Unnecessary | 20 |
| B. On the Merits, Tolokan Raises No Substantial Meeting Competition Issue | 21 |
| CONCLUSION | 24 |
| APPENDIX | 1a |

## TABLE OF AUTHORITIES

*CASES* Page

*Alan's of Atlanta, Inc. v. Minolta Corp.*, 903 F.2d 1414 (11th Cir. 1990) ..... 16, 17
*Atlantic Richfield Co. v. USA Petroleum Co.*, 110 S. Ct. 1884 (1990) ..... 12, 13
*Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc.*, 429 U.S. 477 (1977) ..... 12, 18
*Enterprise Indus. v. Texas Co.*, 240 F.2d 457 (2d Cir.), *cert. denied*, 353 U.S. 965 (1957) ..... 19
*Falls City Indus. v. Vanco Beverage, Inc.*, 460 U.S. 428 (1983) ..... 22, 23
*FTC v. A.E. Staley Mfg. Co.*, 324 U.S. 746 (1945) .. 22
*Hanover Shoe, Inc. v. United Shoe Mach. Corp.*, 392 U.S. 481 (1968) ..... 18
*Hasbrouck v. Texaco, Inc.*, 842 F.2d 1034 (9th Cir. 1987), *aff'd*, 110 S. Ct. 2535 (1990) ..... 17
*ICC v. United States ex rel. Campbell*, 289 U.S. 385 (1933) ..... 16, 19
*J. Truett Payne Co. v. Chrysler Motors Corp.*, 451 U.S. 557 (1981) ..... *passim*
*Matsushita Elec. Indus. Corp. v. Zenith Radio Corp.*, 475 U.S. 574 (1986) ..... 13
*National Soc'y of Professional Eng'rs v. United States*, 435 U.S. 679 (1978) ..... 21
*Patrick v. Burget*, 486 U.S. 94 (1988) ..... 20
*Standard Oil Co. v. FTC*, 340 U.S. 231 (1951) ..... 5, 23
*Texaco, Inc. v. Hasbrouck*, 110 S. Ct. 2535 (1990) .. 21
*Tolokan v. Mobil Oil Corp.*, No. N-82-106 (TEC), slip op. (D. Conn. June 20, 1990) ..... 3
*United States v. Johnston*, 268 U.S. 220 (1925) ..... 14
*United States v. United States Gypsum Co.*, 438 U.S. 422 (1978) ..... 22

*STATUTORY PROVISIONS*

15 U.S.C. § 2 ..... 18
15 U.S.C. § 13(a) ..... 2, 13
15 U.S.C. § 13(b) ..... 2
15 U.S.C. § 15 ..... 2, 12, 13
Conn. Gen. Stat. § 35-45 ..... 2, 11

TABLE OF AUTHORITIES—Continued

*OTHER* Page

M. Handler, *Changing Trends in Antitrust Doctrines: An Unprecedented Supreme Court Term —1977*, 77 Colum. L. Rev. 979 (1977) ..... 18

W. Page, *The Scope of Liability for Antitrust Violations*, 37 Stan. L. Rev. 1445 (1985) ..... 18

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**On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit**

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## RESPONDENT'S BRIEF IN OPPOSITION

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Respondent Mobil Oil Corporation respectfully requests that the Court deny the petition for a writ of certiorari seeking review of the judgment of the United States Court of Appeals for the Second Circuit.

## OPINIONS BELOW

Respondent Mobil Oil Corporation agrees with the citation of opinions below contained in the petition for certiorari.

## JURISDICTION

Respondent Mobil Oil Corporation agrees that the judgment of the court of appeals was entered on September 16, 1991. Petitioners invoke this Court's jurisdiction under 28 U.S.C. § 1254(1).

## STATUTES INVOLVED

Three statutory provisions are addressed by the petition: Sections 2(a) and 2(b) of the Robinson-Patman Act, 15 U.S.C. § 13(a)-(b), are quoted in Appendix C to the petition for certiorari; Section 4 of the Clayton Act, 15 U.S.C. § 15, is quoted in Appendix D to the petition for certiorari. Although the petition references Rules 50 and 59 of the Federal Rules of Civil Procedure, it makes no substantive argument based on those provisions.

## STATEMENT OF THE CASE

This case concerns allegations of price discrimination between February 21, 1981 and September 2, 1988. Petitioners Michael Tolokan, Jr., individually and doing business as Joe and Mike's Service Station, and J & M, Inc. (collectively "Tolokan" or "petitioner"), brought suit alleging that respondent Mobil Oil Corporation ("Mobil") charged a gasoline distributor, Aldin Associates Limited Partnership ("Aldin"), a lower price for Mobil brand gasoline in violation of section 2(a) of the Robinson-Patman Act, 15 U.S.C. § 13(a), and its state-law counterpart, Conn. Gen. Stat. § 35-45.

1. *Procedural Background.* The matter was tried to a jury before Judge T. Emmet Clarie of the United States District Court for the District of Connecticut between January 9 and January 24, 1991. Responding to special interrogatories, the jury returned a verdict for Mobil on two independent grounds. First, the jury found that Mobil was not liable to Tolokan because its pricing had not caused Tolokan antitrust injury. Second, the jury found that even if Tolokan had a cause of action, Mobil was not liable because its lower price to Aldin was a good faith effort to meet competition. The trial court entered judgment for Mobil in accordance with the jury's verdict. Tolokan filed timely motions for judgment notwithstanding the verdict and new trial on February 4,

1991. The trial court denied those motions the following day without opinion.

Tolokan appealed the trial court's judgment to the United States Court of Appeals for the Second Circuit. Although he purported to raise several issues on appeal, he framed only two basic arguments. First, he contended that the meeting competition defense was improperly submitted to the jury. Second, he argued that the jury's consideration of the meeting competition defense tainted its response to the antitrust injury question. The court of appeals heard oral argument in the case on September 10, 1991. In less than a week, that court issued an unpublished *per curiam* opinion affirming the judgment for Mobil. The court found it unnecessary to address any of Tolokan's questions on the meeting competition defense because "[t]here is no basis for believing that the jury's finding of no antitrust injury was unduly influenced by submission of the meeting competition defense, and that finding independently precludes recovery by Tolokan." *See* Pet. for Cert. App. A at 3-4. Tolokan has now filed a petition for certiorari seeking this Court's review of the Second Circuit's judgment.

2. *Record at Trial.* From 1965 until September 2, 1988, Tolokan owned and operated a service station on the Post Road in Guilford, Connecticut. Trial Transcript ("Tr.") (Jan. 10, 1991) at 75-85 (Testimony of M. Tolokan). During the period that he operated the station, Tolokan had successive supply contracts with Mobil and sold gasoline under the Mobil brand name. Tr. (Jan. 10, 1991) at 129 (Testimony of M. Tolokan). These contracts generally lasted for three years and could be terminated by Tolokan upon reasonable notice. During the damage period, held by the trial court to be February 21, 1981 through September 2, 1988,[1] Tolokan never termi-

[1] Ruling on Defendant's Motion for Summary Judgment, *Tolokan v. Mobil Oil Corp.*, Civil No. N-82-106 (TEC), slip op. at 6-8 (D. Conn. June 20, 1990).

nated his supply contract with Mobil. To the contrary, he renewed his supply agreement on July 1, 1981, July 1, 1984, and again in 1988. Tr. (Jan. 10, 1991) at 155-58 (Testimony of M. Tolokan); Tr. (Jan. 10, 1991) at 10-11 (Testimony of J. Schultz).

Pursuant to these contracts, Tolokan purchased gasoline, which Mobil delivered to his station, at Mobil's posted Dealer Tankwagon ("DTW") price on the date of delivery. Tr. (Jan. 9, 1991) at 48-49 (Testimony of J. Schultz). Tolokan's net price for gasoline, however, was actually less than the DTW price. At virtually all times, Mobil gave Tolokan a "competitive allowance" or rebate of between 1½ and 2½¢ per gallon. Tr. (Jan. 10, 1991) at 40-47, 63-69 (Testimony of J. Schultz); Tr. (Jan. 10, 1991) at 134 (Testimony of M. Tolokan). Mobil also made lump sum payments of $50,000 and $35,000 to Tolokan for station improvements. Tr. (Jan. 10, 1991) at 222-28 (Testimony of M. Tolokan). Tolokan did not repay these monies directly. Rather, he "repaid" Mobil by buying certain quantities of gasoline over time. Mobil reduced Tolokan's outstanding debt on a cents per gallon basis for each of Tolokan's purchases. Tr. (Jan. 17, 1991) at 137-39 (Testimony of J. Schultz). Mobil gave Tolokan these competitive allowances and lump sum payments in response to competitive circumstances and in order to retain his business. Tr. (Jan. 10, 1991) at 66 (Testimony of J. Schultz); Tr. (Jan. 17, 1991) at 136-37 (Testimony of J. Schultz). In a real sense, then, independent service station owners, such as Tolokan, were in the "catbird seat," able to play off distributors against refiners and vice versa in search of the best package of discounts and lump sum payments available. Tr. (Jan. 15, 1991) at 8-9 (Testimony of D. Savin).

In addition to selling delivered product at its DTW price, Mobil also sold gasoline at its terminal, or "rack," at a price that was generally lower than its DTW price. Tr. (Jan. 10, 1991) at 7-8 (Testimony of J. Schultz). Customers buying at the rack supplied product to multiple

stations. Historically such customers have been referred to in the oil industry as "distributors," "jobbers," or "wholesalers," even though many of them are vertically integrated and sell some or all of their product through their own retail outlets. *See Standard Oil Co. v. FTC*, 340 U.S. 231, 234-36 (1951); *see also* Plaintiff's Exhibit ("Pl. Ex.") 15 (referring to Mobil's "jobber" price); Tr. (Jan. 18, 1991) at 69-70 (Testimony of S. Pryor); Tr. (Jan. 17, 1991) at 178-80 (Testimony of J. Schultz). Contrary to Tolokan's assertions, Mobil did not "unilaterally" determine who was a "distributor." Tr. (Jan. 18, 1991) at 92-94, 108 (Testimony of S. Pryor). Rather, competitors' offers to sell gasoline to a customer at a rack price determined, from Mobil's perspective, whether that customer was a "distributor" who must be offered Mobil's rack price in order to obtain or retain that customer's business.[2] Mobil competed for distributor business with other major oil companies who also had dealers, as well as with independent oil companies who sold only to distributors at the rack. Tr. (Jan. 18, 1991) at 81-86 (Testimony of S. Pryor).[3]

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[2] Although Tolokan asserts that Mobil's classification of customers as distributors or dealers is "arbitrary," it is "competition that determines whether a customer receives a tank wagon price or rack price." Tr. (Jan. 18, 1991) at 67-68 (Testimony of S. Pryor). If a Mobil customer operates as an individual service station, the market sets a price for that business, and Mobil establishes its prices "very much in line" with the market. *Id.* at 68. On the other hand, if a Mobil customer establishes itself as a gasoline distribution company, as Aldin did, "the market bids distributor prices for that kind of customer." *Id.*

[3] Before December 1982, Mobil's distributor price was a fixed differential off its DTW price. Tr. (Jan. 18, 1991) at 78-79 (Testimony of S. Pryor). Thus, the distributor price moved only when there was a change in Mobil's DTW price or when a competitor offered a larger discount. With the emergence of independent suppliers, such as A-1, Tenneco, Ashland, and Citgo, who sold only at the rack to distributors, fixed differential pricing ceased to be competitive in 1982. Tr. (Jan. 18, 1991) at 81-83, 113-14 (Testimony of S. Pryor). In response to this competition, Mobil, in 1982, inde-

Mobil established its rack and DTW prices on a daily basis in response to competition. From trade services, such as the Oil Price Information Service and the Lundberg Survey, Mobil knew the competitive rack offerings available in the market. Tr. (Jan. 18, 1991) at 76-78, 86-90 (Testimony of S. Pryor); *see* Tr. (Jan. 17, 1991) at 126 (Testimony of J. Schultz). In order to compete for distributor business, Mobil reviewed these published rack prices and independently set its rack price to be competitive in the market. Tr. (Jan. 18, 1991) at 76-78, 86-90 (Testimony of S. Pryor); Tr. (Jan. 17, 1991) at 132-36 (Testimony of J. Schultz). In fact, Mobil had no choice but to be competitive at the rack if it wished to maintain sales to distributors. Steven Pryor, then Mobil's General Manager of Planning and Financial Analysis for United States Marketing, testified:

> Q: What is it that causes you to believe that you don't have a choice, that you have to give your distributors a competitive rack price?
>
> A: . . . [A]ll of our distributors are supplied by multiple suppliers, all of whom give them a rack price, and the prices that they are charged are published every day in the industry. . . . So it is absolutely clear that if I don't give them a distributor price in turn, I would not have their business. That is the way the industry works.

Tr. (Jan. 18, 1991) at 89-90. Likewise, to attract and retain direct-serve dealer business, Mobil reviewed DTW prices available in the same publications and offered a competitive delivered price. As discussed above, Mobil responded to individual competitive circumstances with discounts and lump sum payments. Tr. (Jan. 18, 1991)

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pendently abandoned its fixed differential and established its own "rack price" in response to competitor prices for distributor business. Tr. (Jan. 18, 1991) at 85-86 (Testimony of S. Pryor). Since that time, Mobil's rack price and DTW price have been established independently of one another based on the separate competition for distributor/rack business and direct-serve dealers. *Id.*; Tr. (Jan. 18, 1991) at 27-28 (Testimony of J. Schultz).

at 71 (Testimony of S. Pryor); Tr. (Jan. 17, 1991) at 136-40 (Testimony of J. Schultz).

Aldin Associates Limited Partnership purchased gasoline from Mobil at the rack. Aldin was formed in 1982 by Cantro Petroleum Corporation ("Cantro"), Aldin's general partner, to acquire certain service station properties owned by Lehigh Oil Company ("Lehigh"). Tr. (Jan. 11, 1991) at 128-34 (Testimony of D. Savin). Before forming Aldin, Cantro supplied gasoline to approximately 40 independently owned service stations. The approximately 45 stations Cantro acquired through Aldin from Lehigh were operated directly by Aldin at retail. Tr. (Jan. 11, 1991) at 141-43 (Testimony of D. Savin). During the damage period Aldin had supply contracts with Mobil, Citgo, and Sunoco. Tr. (Jan. 11, 1991) at 203-06 (Testimony of D. Savin). Aldin also purchased gasoline on a noncontract basis from Hess, Northeast, Drake, and "probably two or three others." Tr. (Jan. 11, 1991) at 151-52 (Testimony of D. Savin). About 40 of the total number of stations supplied by Aldin and Cantro operated under the Mobil flag. Tr. (Jan. 11, 1991) at 202-03 (Testimony of D. Savin); Tr. (Jan. 10, 1991) at 22-23 (Testimony of J. Schultz). The remaining stations operated under other brands or were unbranded. Legally, Aldin could sell only Mobil gasoline in Mobil branded stations. However, it could sell any gasoline, including Mobil, in its unbranded stations. Tr. (Jan. 11, 1991) at 204-05 (Testimony of D. Savin); Tr. (Jan. 17, 1991) at 116-17 (Testimony of J. Schultz); Tr. (Jan. 15, 1991) at 7 (Testimony of D. Savin).

When Cantro formed Aldin and acquired the Lehigh stations, Cantro's president, David Savin, advised Mobil that Aldin would terminate Lehigh's supply agreement with Mobil unless Mobil's fixed differential off its DTW price matched that being offered by Mobil's competitors. Tr. (Jan. 15, 1991) at 25-27 (Testimony of D. Savin); *see* Defendant's Exhibit ("Def. Ex.") KKK. Shortly

thereafter, as discussed above, *see supra* note 3, Mobil switched from fixed differential pricing to an independently determined rack price that was responsive to competition on a daily basis. Tr. (Jan. 15, 1991) at 29-30 (Testimony of D. Savin); *see* Tr. (Jan. 18, 1991) at 85-86 (Testimony of S. Pryor). Thus, there was no longer any need for Aldin to request that Mobil match a competitor's fixed differential.

Throughout the damage period, Aldin paid all of its suppliers their respective rack prices. Tr. (Jan. 15, 1991) at 20-21 (Testimony of D. Savin). Mobil's competitors constantly solicited Aldin's business, always offering their rack prices. Tr. (Jan. 15, 1991) at 22-23 (Testimony of D. Savin). Aldin's position on price was consistent and known to Mobil—if Mobil's price were not competitive with other rack prices, Aldin would take its business elsewhere. Tr. (Jan. 15, 1991) at 30-31 (Testimony of D. Savin). Since nothing prevented Aldin from terminating its supply contract with Mobil, Mobil could not treat Aldin's statement as an idle threat. Tr. (Jan. 15, 1991) at 27-28 (Testimony of D. Savin); Tr. (Jan. 17, 1991) at 114 (Testimony of J. Schultz). Moreover, for its unbranded stations, Aldin could buy at the rack from whomever offered the best price. Tr. (Jan. 11, 1991) at 204-05 (Testimony of D. Savin); *see* Tr. (Jan. 11, 1991) at 116-17 (Testimony of J. Schultz).[4]

Among the stations Aldin acquired from Lehigh was a Mobil branded station located over one mile east of the Tolokan station on the Post Road in Guilford, Connecticut. Tr. (Jan. 11, 1991) at 138 (Testimony of D. Savin). Mobil had no separate relationship with that or any other station supplied by Aldin. Mobil did not

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[4] Tolokan, in contrast, never received an offer to purchase gasoline at the rack from a Mobil competitor. Thus, Mobil could not offer Tolokan its rack price as a good faith response to competition. *See* Tr. (Jan. 18, 1991) at 50 (Testimony of J. Shultz).

deliver gas directly to that station. Nor did its marketing representatives make calls on any individual Aldin station. *See* Tr. (Jan. 17, 1991) at 111-12 (Testimony of J. Schultz); Tr. (Jan. 11, 1991) at 208-11 (Testimony of D. Savin). Instead, Mobil made all sales calls on Aldin at its headquarters. Any special promotions or other programs suggested by Mobil were implemented at Aldin's individual locations, if at all, through an Aldin representative who dealt with the particular station. Tr. (Jan. 17, 1991) at 149-54 (Testimony of J. Schultz); Tr. (Jan. 11, 1991) at 208-11 (Testimony of D. Savin).

Aldin has operated its Guilford station since December 1982, selling gasoline at self-service only. Tr. (Jan. 11, 1991) at 177-78 (Testimony of D. Savin). Because this station is the first off exit 59 on Interstate 95, Aldin consistently pursued a high-price/low-volume strategy during the damage period. Tr. (Jan. 11, 1991) at 169-70, 188-89 (Testimony of D. Savin). Given this proximity to transient highway traffic, Aldin charged the highest possible price without regard to prices charged at other Guilford stations. Tr. (Jan. 15, 1991) at 36-41 (Testimony of D. Savin); Tr. (Jan. 11, 1991) at 187-89 (Testimony of D. Savin). At virtually all times during the relevant period, Aldin's self-service pump price at that station was higher than the pump price for Tolokan's full-service gasoline. *See* Pl. Ex. 16; Tr. (Jan. 11, 1991) at 38-39, 48 (Testimony of M. Tolokan). Not surprisingly, given Aldin's pricing strategy, Tolokan lost no sales to the Aldin station as a result of Aldin receiving a lower price from Mobil; nor was Tolokan forced to reduce his profit margin in order to compete with Aldin's Guilford location. *See* Tr. (Jan. 11, 1991) at 49-51, 61-67 (Testimony of M. Tolokan).

At trial Tolokan did not contend that Mobil's lower price to Aldin injured him. Nor did he contend that Aldin used its lower price to gain any competitive advantage. Tr. (Jan. 11, 1991) at 61-67 (Testimony of M.

Tolokan); Tr. (Jan. 17, 1991) at 30-32 (Testimony of petitioner's expert, Dr. R.W. Cotterill); *see* Tr. (Jan. 16, 1991) at 148-50 (Testimony of Dr. R.W. Cotterill) (Aldin chose not to compete on price); Tr. (Jan. 15, 1991) at 109-10 (Testimony of D. Savin) (Aldin did not seek to pass cost savings through to the consumer in order to increase market share). Rather, Tolokan contended, "I was overcharged by Mobil." Tr. (Jan. 11, 1991) at 64 (Testimony of M. Tolokan).

> Q: So, in this case, what you have decided is that to the extent Mr. Tolokan has been injured, it is injury [that] resulted to him from the overcharge?
>
> A: Yes sir, that's correct.

Tr. (Jan. 16, 1991) at 183 (Testimony of Dr. R.W. Cotterill). Tolokan argued that this alleged overcharge was his antitrust injury. He measured that injury in an amount equal to the difference between Mobil's rack and DTW prices times the quantity of gasoline he purchased, Tr. (Jan. 11, 1991) at 67-78 (Testimony of M. Tolokan); Tr. (Jan. 16, 1991) at 178-92 (Testimony of Dr. R.W. Cotterill), and claimed damages of $425,587.42.[5]

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[5] Although Tolokan's petition suggests that he presented three damage estimates, *see* Pet. for Cert. at 12 n.6, in fact, he only presented one damage calculation to the jury. His expert, Dr. Ronald W. Cotterill, flatly stated that the $889,000 figure mentioned in the petition was not a valid calculation. Tr. (Jan. 17, 1991) at 43-45 (Testimony of Dr. R.W. Cotterill). Dr. Cotterill also stated that the $462,000 figure cited in Tolokan's brief was based on numerous assumptions and was therefore less accurate than the damage estimate actually presented. Tr. (Jan. 16, 1991) at 177-83 (Testimony of Dr. R.W. Cotterill); Tr. (Jan. 17, 1991) at 62-63 (Testimony of Dr. R.W. Cotterill). Tolokan's suggestion that the jury had before it damage estimates other than the amount of the alleged price discrimination times gallons purchased is, therefore, inaccurate and misleading.

After deliberating approximately 4 hours over a two-day period, the jury returned a verdict for Mobil. In response to special interrogatories submitted by the court, the jury found that Mobil had charged Aldin and Tolokan different prices for gasoline of like grade and quality. The jury also found that, whereas the price differential threatened injury to competition, Tolokan had, in fact, not suffered antitrust injury. *See* Pet. for Cert. App. B, Special Interrogatory 5. That finding alone precluded Tolokan from recovering damages. The jury then considered Mobil's affirmative defenses and found that Mobil's price to Aldin was a lawful response to competition under section 2(b) of the Robinson-Patman Act and section 35-45(b) of the Connecticut Antitrust Act. *See id.*, Special Interrogatory 6.

As previously noted, Tolokan's post-trial motions were denied the day after they were filed. The Second Circuit affirmed the judgment for Mobil in a *per curiam* opinion issued less than a week after oral argument. Tolokan did not seek rehearing or suggest rehearing en banc. He filed his petition for certiorari on December 11, 1991.

## REASONS FOR DENYING THE WRIT

### I. THE JURY'S VERDICT IN THIS CASE DOES NOT WARRANT THIS COURT'S REVIEW.

Contrary to Tolokan's presentation, the starting point for addressing his petition is the jury's verdict finding no antitrust injury. To recover treble damages under section 4 of the Clayton Act, 15 U.S.C. § 15, a Robinson-Patman plaintiff must prove that he suffered harm "of the type the antitrust laws were designed to prevent and that flows from that which makes defendant['s] acts unlawful." *Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc.*, 429 U.S. 477, 489 (1977). Tolokan failed to carry that burden. The jury's finding against him on the antitrust injury issue is dispositive, and independently supports the judgment for Mobil. Thus, unless Tolokan's petition presents a reviewable question on the issue of antitrust injury, which it clearly does not, this Court should not grant certiorari. *See J. Truett Payne Co. v. Chrysler Motors Corp.*, 451 U.S. 557, 562-63 (1981); *see also Atlantic Richfield Co. v. USA Petroleum Co.*, 110 S. Ct. 1884, 1887 (1990) (without antitrust injury, private antitrust plaintiff has no cause of action).

#### A. This Case Presents No Substantive Legal Question on Antitrust Injury.

Tolokan's petition presents a threshold question on the antitrust injury verdict: Did the Second Circuit correctly hold that the jury's antitrust injury verdict was not unduly influenced by submission of the meeting competition defense? [6]

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[6] Tolokan's petition also asserts that antitrust injury can be presumed in this case because the jury found that the price difference at issue might injure competition. To the extent he offers this as an independent basis for review, it contradicts several decisions of this Court and can be summarily dismissed. Tolokan's argument confuses two separate concepts: injury to competition, which is an element of a prima facie claim under section 2(a) of the Robinson-

That question plainly does not merit this Court's review. On its face, it raises no substantive legal issue. Further, Tolokan does not explain why the question concerns an important issue of federal law needing resolution by the Court. Indeed, it is inconceivable that he could do so. This issue is not likely to arise in other cases. Nor is the Second Circuit's decision likely to have any effect on future litigation. Whether submission of the meeting competition defense unduly influenced the jury's antitrust injury verdict is inevitably bound up in the facts of this case. Whatever the Court's judgment might be on that discrete question, its opinion on such a narrow dispute would have virtually no application beyond this lawsuit.

Moreover, Tolokan invokes none of the other grounds for review usually noted in a petition for certiorari. He identifies no conflict in the circuits on this issue. He does not even challenge the legal standards the trial court used in instructing the jury on antitrust injury. In fact, he took no exception whatsoever to the trial judge's articulation of the law of antitrust injury. He now asks this Court to pierce the jury verdict in order to search for some hint that the finding on antitrust injury—a critical element of his case—was somehow tainted by submission of an affirmative defense. In essence, he invites the Court to scour the record and to substitute its judgment for the considered and unani-

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Patman Act, 15 U.S.C. § 13(a), and antitrust injury, which is a requirement of section 4 of the Clayton Act. 15 U.S.C. § 15. Proof of the former does not permit presumption of the latter. *J. Truett Payne*, 451 U.S. at 562 ("[P]roof of a [Robinson-Patman] violation does not mean that a disfavored purchaser was actually 'injured' within the meaning of § 4."); *see also Atlantic Richfield Co.*, 110 S. Ct. at 1893-95 (plaintiff must prove antitrust injury even when competitive injury conclusively presumed under Sherman Act's per se rule); *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574 (1986) (plaintiff in per se case under section 1 of the Sherman Act must prove antitrust injury to recover damages).

mous opinions of ten jurors and four judges. The Court has previously noted that such canvassing of the evidence is not a task to be served by a grant of certiorari: "We do not grant certiorari to review evidence and discuss specific facts." *United States v. Johnston*, 268 U.S. 220, 227 (1925). It should decline Tolokan's invitation to do that here.

**B. No Evidence Supports Tolokan's Undue Influence Claim.**

Wholly apart from the unexceptional nature of this issue, Tolokan's claim lacks substance. Without any evidence that the jury misunderstood the court's instructions concerning antitrust injury and the meeting competition defense or the order in which those distinct issues were to be considered, Tolokan attempts to manufacture jury confusion by selective and misleading quotation of the jury charge. *See* Pet. for Cert. at 24-26. His petition, however, ignores two dispositive facts. First, the verdict form required the jury to consider whether Tolokan had suffered antitrust injury (Special Interrogatory 5) before it considered whether Mobil had established the meeting competition defense (Special Interrogatory 6). *See* Pet. for Cert. App. B. The verdict form also advised the jury that a finding adverse to Tolokan on the antitrust injury question would preclude recovery. *Id.*

Tolokan challenges neither the order of the questions posed nor the legal effect ascribed to them. His argument merely speculates that the jury jumped ahead and decided the meeting competition issue and then went back to decide the antitrust injury question. He offered no evidence to support that assumption before the Second Circuit, which rejected his theory out of hand. *See* Pet. for Cert. App. A at 3 ("There is no basis for believing the jury's finding of no antitrust injury was unduly influenced by the submission of the meeting competition de-

fense. . . ."). The Second Circuit was correct in holding that petitioner's argument is, at best, speculation and in rejecting it summarily.

Second, the very jury instructions quoted by Tolokan in his petition draw a clear distinction between antitrust injury and the meeting competition defense:

> If you find that Mr. Tolokan has suffered antitrust injury as a result of a violation of the antitrust laws *and that Mobil has not proved that meeting the competition defense or the cost justification defense is available to them*, the law provides that Mr. Tolokan should be fairly compensated for all damages to his business which were a direct result or a likely consequence of the conduct you have found to be unlawful.

Tr. (Jan. 23, 1991) at 103-04; *see* Pet. for Cert. at 25. Tolokan's theory of jury confusion not only presumes the jury ignored the italicized clause of the charge, but that it also disregarded the trial court's earlier instructions:

> If the plaintiff proves by a preponderance of evidence that he suffered antitrust inquiry, then you will still need to consider whether Mobil has established an affirmative defense to the violation. However, if the plaintiff cannot prove by a preponderance of the evidence that he suffered antitrust injury, then you must return a verdict for Mobil.

Tr. (Jan. 23, 1991) at 100. As the Second Circuit found, this charge "clearly explained the logical order of the issues presented for resolution and instructed the jury to decide the issue of antitrust injury before going on to consider affirmative defenses." Pet. for Cert. App. A at 3.[7]

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[7] The Second Circuit also noted that "[t]he District Judge simply acted sensibly in securing from the jury a finding on the meeting competition defense, as an alternative ground for judgment." Pet. for Cert. App. A at 4

Having failed to preserve any substantive objection on the issue of antitrust injury, Tolokan hopes to overcome this deficiency by suggesting that the jury's verdict on this issue lacks integrity. To the contrary, the jury understood the law of antitrust injury as instructed by the trial court, applied that law to the facts as it found them, and rendered the only verdict proper in this case. Under these circumstances, Tolokan's contrived confusion does not raise an issue worthy of the Court's review.

### C. Tolokan Failed to Prove Antitrust Injury as a Matter of Law.

An examination of Tolokan's evidence underscores how well the jury understood the concept of antitrust injury as it applies in Robinson-Patman Act suits. The jury reached the only conclusion that it could on this question because Tolokan's "proof" of antitrust injury failed as a matter of law.

As it applies to price discrimination cases, the law of antitrust injury is clear and not questioned by Tolokan's petition. To prove cognizable injury in a private, secondary-line suit, such as this one, a Robinson-Patman plaintiff must show: (1) the favored buyer passed through its cost savings (by lowering its resale price or offering additional services) and thereby gained competitive advantage; and (2) the favored buyer took sales from plaintiff or forced plaintiff to reduce his profit margin. *See ICC v. United States ex. rel. Campbell*, 289 U.S. 385, 390-91 (1933); *Alan's of Atlanta, Inc. v. Minolta Corp.*, 903 F.2d 1414, 1427 (11th Cir. 1990); *see also J. Truett Payne*, 451 U.S. at 564-65. One without the other is not enough. At trial, Tolokan admitted that he could not satisfy either requirement.

Tolokan conceded that, during the entire seven-year period at issue in this case, Aldin's Guilford station consistently sold gasoline at prices well above those he charged, while offering less service. *See* Tr. (Jan. 16,

1991) at 149-50 (Testimony of Dr. R. W. Cotterill); Tr. (Jan. 11, 1991) at 38-39, 48 (Testimony of M. Tolokan). At the same time, Aldin's sales declined while Tolokan's sales increased substantially. *See* Def. Ex. H; Tr. (Jan. 15, 1991) at 44-47, 49-52 (Testimony of Dr. Savin); Tr. (Jan. 11, 1991) at 50-51 (Testimony of M. Tolokan). Accordingly, Tolokan admitted he lost no sales as a result of the lower prices charged to Aldin. Tr. (Jan. 11, 1991) at 49-51, 61-67 (Testimony of M. Tolokan); Tr. (Jan. 17, 1991) at 30-32 (Testimony of Dr. R.W. Cotterill). Without evidence that any of his customers defected to the Aldin station and unable to argue that he had to lower prices to compete with Aldin, Tolokan could not prove antitrust injury. *Cf. Alan's of Atlanta*, 903 F.2d at 1427; *Hasbrouck v. Texaco, Inc.*, 842 F.2d 1034, 1042-43 (9th Cir. 1987), *aff'd*, 110 S. Ct. 2535 (1990).

With respect to his alleged injury, Tolokan claimed only that he was "overcharged" by Mobil and that he was entitled to "automatic damages" as a result of the "overcharge."

> Q: Is it your understanding that you were injured because you were overcharged, you believe, by Mobil?
>
> A: I was overcharged by Mobil.
>
> Q: And that is the cause of your injury, being overcharged by Mobil as you understand?
>
> A: Yes.
>
> * * * *
>
> Q: Absolutely. Your ability to compete was in no way affected by Aldin deciding not to pass its so-called discount through to the consumer.
>
> A: I would say that is a fair statement.

Tr. (Jan. 11, 1991) at 64-66 (Testimony of M. Tolokan); *see also* Tr. (Jan. 16, 1991) at 183 (Testimony of Dr. R. W. Cotterill).[8]

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[8] Because *J. Truett Payne* rejected the concept of automatic damages, Tolokan used a different nomenclature. He claimed to

A price discrimination plaintiff who complains only of an overcharge has no cognizable antitrust injury.[9] The Court has long recognized the distinction between overcharge and price discrimination. Justice Cardozo gave the first and perhaps the best articulation of the conceptual difference:

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have lost "marketing flexibility." The concepts, however, are identical. Tolokan measured his lost "marketing flexibility" solely by the amount of the alleged price discrimination; there was no evidence of diverted sales or profits. He simply calculated the difference between the price he paid for gasoline and the price Aldin paid and multiplied that number by the number of gallons he purchased during the seven-year damage period. *See* Pl. Ex. 20; Tr. (Jan. 16, 1991) at 32-39 (Testimony of Dr. R.W. Cotterill).

[9] Tolokan's reliance on *Hanover Shoe, Inc. v. United Shoe Mach. Corp.*, 392 U.S. 481 (1968), in support of his overcharge theory displays a complete misunderstanding of the antitrust injury requirement and its relation to each of the antitrust laws. *Hanover Shoe* was a monopolization case under section 2 of the Sherman Act. 15 U.S.C. § 2. When a seller unlawfully monopolizes a market, it raises prices of the goods or services it sells above the level that would have existed in a nonmonopolized market. The price level established by the monopolist is directly "attributable to something the antitrust laws were designed to prevent." *J. Truett Payne*, 451 U.S. at 562. The monopolist's customers suffer injury because they must pay a premium above the price to which the Sherman Act otherwise entitles them. The so-called "monopoly overcharge" is therefore an appropriate measure of antitrust injury in a monopolization case. *See* W. Page, *The Scope of Liability for Antitrust Violations*, 37 Stan. L. Rev. 1445, 1468-69 (1985).

By contrast, the Robinson-Patman Act entitles the buyer to no specific price level. That statute simply guarantees parity—that is, the law assures the buyer that, absent certain circumstances, its competitors are not charged less for commodities of like grade and quality. The *lower* price to the favored buyer, not the higher price to the disfavored buyer, constitutes the unlawful conduct in a Robinson-Patman case. *See generally* M. Handler, *Changing Trends in Antitrust Doctrines: An Unprecedented Supreme Court Term—1977*, 77 Colum. L. Rev. 979, 992-93 (1977). Since the overcharge does not "flow[] from that which makes defendant['s] acts unlawful," *Brunswick Corp.*, 429 U.S. at 489 (1977), it cannot support a claim for treble damages under section 4 of the Clayton Act.

> Overcharge and discrimination have very different consequences, and must be kept distinct in thought. When the rate exacted of a shipper is excessive or unreasonable in and of itself, irrespective of the rate exacted of competitors, there may be recovery of the overcharge without other evidence of loss . . . . But a different measure of recovery is applicable 'where a party that has paid only the reasonable rate sues upon a discrimination because some other has paid less.' Such a one is not to recover as of course a payment reasonable in amount for a service given and accepted. He is to recover the damages he has suffered, which may be more than the preference or less, but which, whether more or less, is something to be proved and not presumed. 'Recovery cannot be had unless it is shown that, as a result of defendant's acts, damages in some amount susceptible of expression in figures resulted.' *The question is not how much better off the complainant would be today if it had paid a lower rate. The question is how much worse off it is because others have paid less.*

*ICC v. United States ex rel. Campbell*, 289 U.S. 385, 390 (1933) (citations omitted and emphasis added). That reasoning was aptly extended to Robinson-Patman jurisprudence by the Second Circuit in *Enterprise Indus. v. Texas Co.*, 240 F.2d 457, (2d Cir.), *cert. denied*, 353 U.S. 965 (1957), and is the rationale supporting this Court's rejection of the "automatic damages" concept in *J. Truett Payne, supra.*

At bottom, Tolokan's evidence of injury is nothing more than a reconstituted version of "automatic damages." Since that approach was squarely rejected in *J. Truett Payne* as a matter of law, the jury's finding on the antitrust injury issue was the only one it could have rightfully made. Further review of that determination is not necessary.

## II. PETITIONER'S QUESTIONS ON THE MEETING COMPETITION DEFENSE ARE NOT WORTHY OF REVIEW.

### A. Tolokan's Failure to Present an Antitrust Injury Question Warranting Review Makes Consideration of the Other Questions in the Petition Unnecessary.

Because Tolokan has not presented a question worthy of review with respect to the predicate issue of the antitrust injury verdict, the Court need not consider any of the other questions presented in his petition.

His petition attempts to use the meeting competition defense, an issue on which he preserved some objections, to bootstrap himself into review of the jury's antitrust injury finding. The Second Circuit saw through this thinly disguised end run. The court below correctly recognized that Tolokan's meeting competition questions could be reached only if Tolokan demonstrated that consideration of the defense affected the verdict on antitrust injury. Since it could find no support for that argument, the Second Circuit found it unnecessary to address any of Tolokan's questions on the meeting competition defense. *See* Pet. for Cert. App. A at 3 ("We need not reach the question of whether the meeting competition defense was properly submitted.").

As a matter of sound judicial practice, this Court generally refuses to consider questions presented in a petition for certiorari that were not passed on by the lower court. *Patrick v. Burget*, 486 U.S. 94, 99 n.5 (1988); *J. Truett Payne*, 451 U.S. at 568. No reason exists for departing from that practice here. Since the Second Circuit did not rule on any substantive meeting competition question, and Tolokan has failed to raise an antitrust injury question meriting the Court's attention, the Court need go no further to dispose of his petition.

**B. On the Merits, Tolokan Raises No Substantial Meeting Competition Issue.**

Even if the Court were inclined to depart from its normal practice, Tolokan's claims of error regarding the meeting competition defense are not worthy of this Court's review. As with his speculation that the jury's verdict was tainted, Tolokan does not ask the Court to consider an important issue of federal law or to address a conflict among the circuits. He asks only that the Court parse the record and determine whether the jury correctly applied the law to the facts of this case. Such a request should be denied.

At bottom, Tolokan's petition raises only two basic issues. First, by reasoning that is unsupported by law, he contends that Mobil's reliance here on the meeting competition defense would somehow circumvent the Court's holding in *Texaco, Inc. v. Hasbrouck*, 110 S. Ct. 2535 (1990). Tolokan's petition implicitly suggests that *Hasbrouck* prohibited Robinson-Patman defendants from raising the meeting competition defense in those dual distribution cases in which price differences are not justified on a cost or functional basis. *See* Pet. for Cert. at 14-15. This argument cannot be taken seriously. It amounts to an assertion that *Hasbrouck* worked a judicial repeal of section 2(b) of the Robinson-Patman Act. That case did no such thing, and Article III confers no such power upon the Court. *Cf. National Soc'y of Professional Eng'rs v. United States*, 435 U.S. 679, 695-96 (1978) (judicially created exception to Sherman Act for dangerous goods and services would be "tantamount to a repeal of the statute"; policy of Sherman Act precludes judicial inquiry into whether competition is good or bad). Therefore, this ground for granting the writ can be summarily dismissed.

Second, Tolokan asserts that Mobil failed to adduce evidence sufficient to support its meeting competition defense. This theory rests on a hodgepodge of factual contentions, most of which fall into two categories. First, Tolokan con-

tends that Mobil was required to identify the specific competitive offers it was meeting in order to satisfy its burden under section 2(b). That argument was flatly rejected in *Falls City Indus. v. Vanco Beverage, Inc.*, 451 U.S. 428, 448-51 (1983). There, the Court explained that a customer-by-customer requirement might make competition "unrealistically expensive" and was unlikely to result in prices different from those set according to information relating to competitors' territorial prices. *Id.* at 449.

As previously noted, Mobil personnel reviewed the prices charged by competitors in the market using publicly available information such as the Oil Price Information Service and the Lundberg Survey. Tr. (Jan. 18, 1991) at 76-78, 86-90 (Testimony of S. Pryor). The onerous customer-by-customer requirement Tolokan would engraft onto the meeting competition defense would effectively render the defense unavailable in highly competitive markets, such as the gasoline market in this case. As the *Falls City* Court recognized, section 2(b) imposes no such duty on the seller. Instead, the seller must "show the existence of facts which would lead a reasonable and prudent person to believe that the granting of a lower price would in fact meet the equally low price of a competitor." *United States v. United States Gypsum Co.*, 438 U.S. 422, 451 (1978) (quoting *FTC v. A.E. Staley Mfg. Co.*, 324 U.S. 746, 759-60 (1945)). Applying this standard, as instructed by the trial court, the jury determined that Mobil met that burden here. Tolokan raises no issue that would occasion the Court to disturb the jury's verdict.[10]

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[10] Interestingly, by measuring his alleged injury solely by the amount of the price difference, Tolokan admitted that Mobil's price to the Aldin station was a good faith effort to meet competition. His expert, Dr. Ronald W. Cotterill, testified that Aldin was a "big fish," Tr. (Jan. 16, 1991) at 25-26, and that were Mobil required to eliminate the price difference between Tolokan and Aldin, it

Second, Tolokan contends that Mobil cannot sustain the meeting competition defense here because the jury found that Aldin and Tolokan competed at the retail level. This fact does nothing to advance Tolokan's position. The argument that Mobil could not give Aldin its "wholesale" price because Aldin competed at the retail level is a meaningless semantic exercise that the Court has previously rejected. *Standard Oil Co.*, 340 U.S. at 236 n.4 (1951). If Mobil reasonably and in good faith believed that its competitors made gasoline available to Aldin at the same price they charged nonintegrated wholesalers, then section 2(b) permitted Mobil to meet that competitive price, regardless of whether Aldin was a wholesaler, a retailer, or both. The functional title Tolokan appends to the buyer is irrelevant. *Id.* Tolokan's exercise in semantics ultimately collapses into a repeat of his assertion that any discount not functionally or cost justified is unlawful under the Robinson-Patman Act. As such, it may be rejected out of hand.

Thus, even on the meeting competition issue, Tolokan's petition does not ask for resolution of any pressing question of federal law. Instead, it merely asks the Court to reweigh the facts and reach a conclusion different from the jury's. This misperceives the Court's function and plainly does not warrant the extraordinary grant of its discretionary review.

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would lower Tolokan's price rather than raise Aldin's. When asked to explain his reasoning, Dr. Cotterill said: "The price to Tolokan is the higher price. Mobil could not move the price for Aldin up to that price and retain Aldin, clearly." Tr. (Jan. 22, 1991) at 165. Since Mobil need justify only the lower price in order to satisfy its burden under section 2(b), *Falls City Indus.*, 460 U.S. at 442, Dr. Cotterill's statement concedes that Mobil's lower price to Aldin was necessary to retain Aldin's business. That is the essence of the meeting competition defense.

## CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

ANDREW J. KILCARR *
EDWARD C. DUCKERS
WILLIAM L. MONTS III
HOGAN & HARTSON
555 Thirteenth Street, N.W.
Washington, D.C. 20004-1109
(202) 637-5621

DEBORAH V. SWIRLING
MOBIL OIL CORPORATION
3225 Gallows Road
Fairfax, VA 22037-0001
(703) 846-5856

* Counsel of Record

*Counsel for Respondent*

# APPENDIX

## APPENDIX

MOBIL OIL CORPORATION

ABORAY PTY. LIMITED
ABU DHABI PETROLEUM COMPANY LIMITED
ACE POLYMER CO., LTD.
ADRIA WIEN PIPELINE GESMBH
AIMCO (ALPHA) SHIPPING COMPANY
AIMCO (OMEGA) SHIPPING COMPANY LTD.
AIRCRAFT FUEL SUPPLY B.V.
AIRTANKDIENST KOELN
AK CHEMIE GMBH & CO. KG
AKAUMA ASPHALT INDUSTRIES, LTD.
ALEXANDROUPOLIS PETROLEUM INSTALLATION S.A.
ALTADENA LIMITED
ALTONA PETROCHEMICAL COMPANY LIMITED
AMMENN GMBH
ANDREWS OIL PTY. LIMITED
ANKARA GAZ SATIS A.S.
ARABIAN CHEMICAL TERMINALS
ARABIAN INTERNATIONAL MARITIME COMPANY
ARABIAN INTERNATIONAL MARITIME COMPANY LIMITED
ARABIAN TRADING CO. S.A.
ARAL AKTIENGESELLSCHAFT
ATAS ANADOLU TASFIYEHANESI A.S.
ATLAS SAHARA S.A.
AUSTRALIAN SYNTHETIC RUBBER CO. LIMITED
AUTOBAHN-BETRIEBE GESELLSCHAFT MBH
AVIATION FUEL SERVICES LIMITED
AYGAZ A.S.
BALGEE OIL PTY. LIMITED
BANGKOK AVIATION FUEL SERVICES LIMITED
BARRORAFT PTY. LTD.
BAYERISCHE ERDGASLEITUNG GMBH
BAYERISCHE MINERAL-INDUSTRIE AG

BEER GMBH
BEER GMBH & CO. MINERALOEL-VERTRIEBS-KG
BIN SULAIMAN MOBIL TOWERS
BLUEFIELD INSURANCE LIMITED
BML (NO. 2) LIMITED
BRICKWOOD HOLDINGS PTY. LTD.
CANADIAN SUPERIOR OIL (AUST.) PTY. LTD.
CANNER'S STEAM COMPANY, INC.
CANYON REEF CARRIERS, INC.
CAS (COMBINED AUTOMATION SYSTEM), B.V.
CELMISIA SHIPPING CORPORATION
CENTRAL AFRICAN PETROLEUM REFINERIES (PRIVATE) LIMITED
CERCERA SA
CHANGI AIRPORT FUEL HYDRANT INSTALLATION PTE. LTD.
CHUBU TORESEN K.K.
COLLINS PIPELINE COMPANY
COLOMBIANOS DISTRIBUIDORES DE COMBUSTIBLES, S.A. "CODI"
COLONIAL PIPELINE COMPANY
COMET BRENNSTOFFDIENST GMBH
COMMERCIAL POLYMERS PTY. LIMITED
COMMODORE MARITIME COMPANY S.A.
COMPAGNIE AFRICAINE DE TRANSPORT CAMEROUN (CAT.CN)
COMPAGNIE D'ENTREPOSAGE COMMUNAUTAIRE
COMPAGNIE DES PETROLES PRIMAGAZ
COMPAGNIE IMMOBILIERE (COMIMMO)
COMPAGNIE RHENANE DE RAFFINAGE-CRR
COMPAGNIE SENEGALAISE DES LUBRIFIANTS
COMPAGNIE DE LUBRICANTES DE CHILE LIMITADA (COPEC MOBIL LTDA.)
CONSORTIUM RAYMOND DUEZ
COOK INLET PIPE LINE COMPANY
COREDIS
CORYTON COGEN LIMITED
CYPRUS PETROLEUM REFINERY LIMITED

DEPOT PETROLIER DE MOUREPIANE
DEPOT PETROLIER DU GRESIVAUDAN
DEPOTS DE PETROLE COTIERS
DEPOTS PETROLIERS DE LA CORSE (DPLC)
DEUTSCHE PENTOSIN-WERKE GMBH
DEUTSCHE TRANSALPINE OELLEITUNG GMBH
DIXIE PIPELINE COMPANY
DUKHAN SERVICES COMPANY W.L.L.
DUPONT & DEWULF N.V.
EAST TEXAS SALT WATER DISPOSAL COMPANY
ENTREPOT PETROLIER DE MULHOUSE
ENTREPOT PETROLIER DE NANCY
ENTREPRISE JEAN LEFEBVRE
ERDGAS-VERKAUFS-GESELLSCHAFT MBH
ERDOEL-RAFFINERIE NEUSTADT GMBH & CO. OHG
ERDOL-LAGERGESELLSCHAFT M.B.H.
ESTACIONES DE SERVICIO ML, S.A.
ETABLISSEMENTS BOUTHENET
ETABLISSEMENTS JOSEPH WALLACH
ETABLISSEMENTS ROHRMANN DUFOSSE
ETABLISSEMENTS STARCK & CIE
FAIRWIND MARITIME COMPANY S.A.
FAVANG AUTOVERKSTED A/S
FELIX OIL COMPANY
FIBIL SA
FILTROS DE COSTA RICA, S.A.
FRUEHMESSER GMBH
FRUEHMESSER MINERALOLHANDELS GMBH & CO. KG
FUSO OPERATIONS KABUSHIKI KAISHA
GATWICK REFUELLING SERVICES LIMITED
GAZAL-GAZ ALETLERI A.S.
GEOMINES-CAEN
GEOVEXIN
GHANA BUNKERING SERVICES LIMITED
GUZZARDI PETROLEUM (GIPPSLAND) PTY LIMITED

HANIEL HANDEL GMBH
HEIZOL-HANDELSGESELLSCHAFT MBH
HELLAS GAS STORAGE CO. S.A.
HIBERNIA MANAGEMENT & DEVELOPMENT COMPANY, LTD.
HYDRANTEN-BETRIEBS-GESELLSCHAFT FLUHAGEN/FRANKFURT
INDUSTRIA INTERAMERICA DE FILTROS LTDA. "INTERFIL"
INTOPLANE SERVICES COMPANY LIMITED
IRANIAN OIL PARTICIPANTS LTD.
IRANIAN OIL SERVICES (HOLDINGS) LTD.
IRANIAN OIL SERVICES LIMITED
IRAQ PETROLEUM COMPANY LIMITED
IRAQ PETROLEUM PENSIONS LIMITED
ITALOIL S.R.L.
JAPAN AIRPORT FUELING SERVICE COMPANY, LTD.
JECOP
K.K. SANKYO PLASTICS
K.K. TORESEN
KANSAI PETRO-TERMINAL CO., LTD.
KARL STORZ GMBH & CO. KG
KAWASAKI KYGNUS SEKIYU HAMBAI K.K.
KEIYO SEA-BERTH COMPANY, LTD.
KELINDA PTY. LIMITED
KLAUS KOEHN GMBH
KLAUS KOEHN GMBH & CO. MINERALOEL KG
KURT AMMENN GMBH & CO. KG
KYGNUS EKKA GAS KABUSHIKI KAISHA
KYGNUS KOSAN KABUSHIKI KAISHA
KYGNUS MARKETING SERVICE K.K.
KYGNUS SEKIYU KABUSHIKI KAISHA
KYGNUS SEKIYU SEISEI KABUSHIKI KAISHA
KYOKUTO SEKIYU KOGYO KABUSHIKI KAISHA
LA CENTRAFRICAINE DES PETROLES
LILAC SEKIYU K.K.
LIPET-LIKIT PETROL GAZI VE YAKIT TICARET A.S.

LUBLEND LIMITED
LUBRICANTES DEL SUR, S.A.
MARCEAUX & CIE
MATCO TANKERS (U.K.) LIMITED
MEENTZEN & FRANKE GMBH & CO.
MEI FOO GUANGZHOU PETROLEUM COMPANY LIMITED
MEI FOO PROPERTIES LTD.
MERTL GMBH
MID STATE PETROLEUM PTY. LIMITED
MINERALOEL-HANDELS-GESELLSCHAFT MBH
MINERALOELWERK WEDEL GMBH & CO. OHG
MOBIL CATALYSTS CORPORATION OF JAPAN
MOBIL CORPORATION (Parent)
MOBIL HOLDINGS BENELUX INC.
MOBIL KOREA LUBE OIL, INC.
MOBIL MARKETING BARBADOS COMPANY LIMITED
MOBIL MOTOR REST SA
MOBIL OIL—AFOR KERESKEDELMI KFT.
MOBIL OIL BARBADOS LIMITED
MOBIL OIL BURKINA
MOBIL OIL CAMEROUN
MOBIL OIL CANADA
MOBIL OIL CANADA PROPERTIES
MOBIL OIL CANADA, LTD.
MOBIL OIL DE CHILE LIMITADA
MOBIL OIL DE MEXICO, S.A. DE C.V.
MOBIL OIL DJIBOUTI
MOBIL OIL FRANCAISE
MOBIL OIL GABON
MOBIL OIL GHANA LIMITED
MOBIL OIL GUAM INC.
MOBIL OIL HONG KONG LIMITED
MOBIL OIL (MALAWI) (PRIVATE) LIMITED
MOBIL OIL MAROC
MOBIL OIL MAURITANIE
MOBIL OIL MICRONESIA, INC.

MOBIL OIL NIGER
MOBIL OIL NIGERIA PUBLIC LIMITED COMPANY
MOBIL OIL PORTUGUESA, SA
MOBIL OIL RWANDA BURUNDI
MOBIL OIL SIERRA LEONE LIMITED
MOBIL OIL SUDAN LIMITED
MOBIL OIL TAIWAN LTD.
MOBIL OIL TANZANIA LIMITED
MOBIL OIL TCHAD
MOBIL OIL THAILAND LIMITED
MOBIL OIL ZAMBIA LIMITED
MOBIL OIL ZIMBABWE (PRIVATE) LIMITED
MOBIL OVERSEAS SHIPPING (BERMUDA) LTD.
MOBIL PHILIPPINES INC.
MOBIL PLASTICS EUROPEA SUD S.P.A.
MOBIL PRODUCING CAMEROON INC.
MOBIL PRODUCING NIGERIA UNLIMITED
MOBIL SALES AND TRADING INTERNATIONAL LIMITED
MOBIL TUNISIE
MOBILGAZ MOBIL PETROL GAZLARI A.S.
MOBILREX
MOGESTE-GESTAO DE POSTOS DE ABASTECIMENTO, LDA.
MOTEL REST SA
MT. MARROW BLUE METAL QUARRIES PTY. LIMITED
MULTI-TANK CARD B.V.
N.V. ROTTERDAM-RIJN PIJPLEIDING MAATSCHAPPIJ
N. V. SOCONY-STANDARD-VACUUM OIL COMPANY (PETROLEUM MAATSCHAPPIJ)
NAKAJIMA COSAN KABUSHIKI KAISHA
NEAR EAST DEVELOPMENT CORPORATION
NEW ZEALAND SYNTHETIC FUELS (HOUSING) CORPORATION LIMITED
NEW ZEALAND SYNTHETIC FUELS CORPORATION LIMITED
NICHIEI INDUSTRY CO., LTD.

NICHIMO OIL (BERMUDA) CO., LTD.
NIPPON UNICAR COMPANY, LIMITED
NORDDEUTSCHE ERDGAS-AUFBEREITUNGS-GESELLSCHAFT MBH
NORVAC PTY. LIMITED
OCTAGON PTY. LTD.
OLDENBURGISCHE ERDOEL GESELLSCHAFT MBH
OLJEFORSYNING OFAS A.S.
OSAKA KYGNUS K.K.
OVENS & MURRAY PETROLEUM PTY, LTD.
P.T. ARUN NATURAL GAS LIQUEFACTION COMPANY
P.T. STANVAC INDONESIA
PALOMA PIPE LINE COMPANY
PARS INVESTMENT CORPORATION (PRIVATE COMPANY)
PAUL HARLING MINERALOEL GMBH & CO. KG
PEACE PIPE LINE LTD.
PERKAL PTY. UNLIMITED
PETROCAB
PETROCAM PTY LIMITED
PETROGAS PROCESSING LTD.
PETROLEUM SERVICES (MIDDLE EAST) LIMITED
PETROMIN LUBRICATING OIL COMPANY
PETROMIN LUBRICATING OIL REFINING COMPANY
PETROMIN-MOBIL YANBU REFINERY COMPANY LTD.
PLEGADIZOS PARA LA INDUSTRIA, S.A.
PIONEER KOSAN K.K.
PRESNALL PTY. LIMITED
PROGAS LIMITED
PROVIDANGE
P6-GROEP B.V.
R. SHERWOOD LTD.
RACOON S.R.L.
RAINBOW PIPE LINE COMPANY, LTD.
RED SEA PLASTIC FACTORY COMPANY LIMITED

REGULUS HOLDING (SINGAPORE) PTE. LTD.
RHODES PETROLEUM INSTALLATION S.A.
ROHOL-AUFSUCHUNGS GESELLSCHAFT MBH
RUHRGAS AKTIENGESELLSCHAFT
RUNDEL MINERALOELVERTRIEB GMBH
S.C. BRUSSELS AIRFUELS SERVICES C.V.
SABA-SOCIEDADE ABASTECEDORA DE AERONAVES, LDA.
SARL ETABLISSEMENTS MICHEL FAURE
SAUDI MARITIME COMPANY LTD.
SAUDI YANBU PETROCHEMICAL CO.
SAWYER PETROLEUM PTY. LTD.
SCHUBERT KOMMANDITGESELLSCHAFT
SEGHER DE MEXICO, S.A. DE C.V.
SIERRA LEONE PETROLEUM REFINING COMPANY LIMITED
SIGEL INCORPORATED
SOCIETA' ITALIANA PER L'OLEODOTTO TRANSALPINO-SIOT S.P.A.
SOCIETE "LES FILS DE FERRERO"
SOCIETE AFRICAINE DE RAFFINAGE (S.A.R.)
SOCIETE ANONYME DE GESTION DES STOCKS DE SECURITE
SOCIETE BELGE DE TRANSPORT PAR PIPELINE S.A.
SOCIETE BRETONNE DE DISTRIBUTION DE PRODUITS
SOCIETE CAMEROUNAISE DE DEPOTS PETROLIERS (S.C.D.P.)
SOCIETE COLMARIENNE DE DISTRIBUTION DE PRODUITS PETROLIERS
SOCIETE COMBUSTIBLES DE PROVENCE
SOCIETE D'ENTREPOSAGE DE GABES
SOCIETE D'ENTREPOSAGE DE SAN PEDRO
SOCIETE D'ENTREPOSAGE PETROLIER AU BURUNDI (SEP BURUNDI)
SOCIETE DE CONSTRUCTION & DE GESTION CB.12

SOCIETE DE GESTION DE DEPOTS D'HYDROCARBURES
SOCIETE DE GESTION DES STOCKS PETROLIERS DE COTE D'IVOIRE (GESTOCI)
SOCIETE DE MANUTENTION CARBURENTS AVIATION DE TAHITI (SOMCAT)
SOCIETE DE MANUTENTION DE CARBURANTS AVIATION (S.M.C.A.)
SOCIETE DE MANUTENTION DE CARBURANTS AVIATION DAKAR-OFF
SOCIETE DES PETROLES DE ZERBI
SOCIETE GABONAISE D'ENTREPOSAGE DE PRODUITS PETROLIERS
SOCIETE GABONAISE DE RAFFINAGE
SOCIETE IVOIRIENNE DE FABRICATION DE LUBRIFIANTS (S.I.F.A.L.)
SOCIETE IVOIRIENNE DE RAFFINAGE
SOCIETE JEAN ROUSSEL S.A.
SOCIETE MALIENNE D'ENTREPOSAGE (S.M.E.)
SOCIETE MAURITANIENNE D'ENTREPOSAGE DE PRODUITS PETROLIERS
SOCIETE NATIONALE DE RAFFINAGE
SOCIETE NORMANDE DE COMBUSTIBLES ET LUBRIFIANTS-NICOL
SOCIETE PIZO DE FORMULATION DE LUBRIFIANTS
SOCIETE STATION-SERVICE LUNES
SOCIETE TAHITIENNE DE DEPOTS PETROLIERS
SOCIETE TAHITIENNE DES OLEODUCS (STDO)
SOCIETE TCHADIENNE D'ENTREPOSAGE DE PRODUITS PETROLIERS
SOCIETE TOGOLAISE D'ENTREPOSAGE
SOUTH SASKATCHEWAN PIPE LINE COMPANY
STATFJORD TRANSPORT A.S.
STATION MANAGERS OF GUAM, INC.
STE CAMEROUNAISE EQUATORIALE DE FABRICATION DE LUBRIFANTS (S.C.E.F.L.)

STE DES BITUMES & CUT-BACKS DU CAMEROUN (S.B.C.B.C.)
STRASBURGER ENTERPRISES (PROPERTIES) PTY. LIMITED
SUN EAST COMPANY, LIMITED
SUPERIOR DISK CORPORATION
SYDNEY METROPOLITAN PIPELINE PTY. LIMITED
T&M TERMINAL COMPANY
TANKBAU-GMBH
TANKLAGERGESELLSCHAFT KOELN-BONN
TAR TANKANLAGE RUEMLANG AG
TECKLENBURG GMBH
TECKLENBURG GMBH & CO. ENERGIEBEDARF KG
TEMA LUBE OIL COMPANY, LTD.
TGF TANKDIENST-GESELLSCHAFT FRANKFURT
THAILAND SOLVENT PRODUCTS LIMITED
THE ARABIAN ENERGY COMPANY LIMITED
THE ARABIAN PETROLEUM SUPPLY CO. (S.A.)
THE NEW ZEALAND REFINING COMPANY LIMITED
THE SAUDI CAN COMPANY LTD.
THOC COMPANY
THUMS LONG BEACH COMPANY
TOHPREN CO., LTD.
TOKUSHIMA SEKIYU KABUSHIKI KAISHA
TONEN CHEMICAL CORPORATION
TONEN CORPORATION
TONEN ENERGY AND MARINE (SINGAPORE) PTE. LTD.
TONEN ENERGY INTERNATIONAL CORPORATION
TONEN FILARE CO. LTD.
TONEN FILM CO. LTD.
TONEN KAGAKU NASU CO., LTD.
TONEN PROPERTIES INC.
TONEN SOGO SERVICE COMPANY, LTD.
TONEN SYSTEM PLAZA INC.
TONEN SYSTEM SERVICE, INC.

TONEN TANKER KABUSHIKI KAISHA
TONEN TAPYRUS COMPANY LIMITED
TONEN TECHNOLOGY KABUSHIKI KAISHA
TONEX COMPANY LIMITED
TOWA COMPOUNDING COMPANY, LIMITED
TOYOSHINA FILM COMPANY, LIMITED
TRADEWIND MARITIME CO. S.A.
TRANSALPINE OELLEITUNG IN OESTERREICH GESELLSCHAFT M.B.H.
TRANSIT OIL MALI
TRESKOME PTY. LIMITED
TRINITY PETROLEUM SERVICES PTY. LIMITED
TRYICE PTY. LIMITED
TULLIA 89-S.R.L.
TURKISH PETROLEUM COMPANY LIMITED
TWIFO OIL PALM PLANTATIONS LIMITED
UBAG UNTERFLUR-BETANKUNGSANLAGE AG
UNITED KINGDOM OIL PIPELINES LIMITED
VALODIA
W.A.G. PIPELNE PTY. LIMITED
WAITOMO/BRENNAN PETROLEUM, LTD.
WAKO JUSHI KABUSHIKI KAISHA
WALTON-GATWICK PIPELINE COMPANY LIMITED
WERNER WEIDEMANN MINERALOELVERTRIEB GMBH
WEST LONDON PIPELINE AND STORAGE LIMITED
WEST SHORE PIPE LINE COMPANY
WILHELM MERTL GMBH & CO. KG
WIRI OIL SERVICES LIMITED
WOLVERINE PIPE LINE COMPANY
WYMONDHAM OIL STORAGE CO. LIMITED
ZAIRE MOBIL OIL, S.A.R.L.
ZAIRE S.E.P.